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In the Supreme Court of the United States

No. 693

OCTOBER TERM, 1955.

WILLIAM J. KRAUS,
A Taxpayer on Behalf of the City of Cleveland,
Appellant,

vs.

CITY OF CLEVELAND, *et al.*,
Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

JURISDICTIONAL STATEMENT.

WILLIAM J. KRAUS,
In Propria Persona,
331 Leader Bldg.,
Cleveland 14, Ohio.

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CITY OF CLEVELAND, *et al.*,
Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the Supreme Court of the State of Ohio entered in the above entitled case on September 28, 1955, on the denial of an application for rehearing and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW.

The opinion of the Supreme Court of the State of Ohio is reported in 163 Ohio St. 559, 127 N. E. 2d 609, and is printed in Appendix A hereto.

The opinion of the Court of Appeals for the Eighth Judicial District of Ohio is reported in 121 N. E. 2d 311, and the opinion of the Court of Common Pleas of Cuyahoga County, Ohio, is reported in 116 N. E. 2d 779.

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JURISDICTION.

Appellant brought the action which is the subject of this appeal in the Common Pleas Court of Cuyahoga County, Ohio, as a taxpayer on behalf of the City of Cleveland, Ohio. The action sought to enjoin the City of Cleveland from adding to its water supply system, inorganic fluoride chemicals, this process being commonly referred to as fluoridation, as provided by ordinance, and to have such ordinance declared invalid as repugnant to provisions of the Constitution of the United States. The invalidity of the ordinance as repugnant to the Constitution of the United States was raised by appellant's petition in the Common Pleas Court and by Assignments of Error in the Court of Appeals and Supreme Court of the State of Ohio. In addition, the Supreme Court of Ohio has certified to this Court that its decision in favor of the validity of the ordinance in question was based upon the provisions of the Constitution of the United States. Appendix D, attached hereto.

The judgment of the Supreme Court of the State of Ohio was entered on June 29, 1955. Journal Entry, Appendix B. Rehearing was denied on September 28, 1955. Journal Entry, Appendix C, attached hereto.

The statutory provision believed to confer upon this Court jurisdiction of the appeal is Section 1257 of Title 28, United States Code, which provides as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The provisions of the Constitution of the United States here involved are as follows:

Constitution of the United States, Amendment XIV, Sec. 1:

> "* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of laws."

Constitution of the United States, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

The ordinance of the City of Cleveland here involved, is as follows:

> Resolution No. 270-51 passed by Council of City of Cleveland, Ohio and effective on March 14, 1951:
>
> "An Emergency Resolution Requesting the Director of Public Utilities to Take the Steps Necessary to Begin the Treatment of City Water with Fluorides.
>
> "Whereas, pursuant to Resolution No. 1869-50, passed October 27, 1950, the Director of Public Utilities and the Director of Public Health and Welfare have investigated and reported favorably upon the feasibility and practicability of treating city water with fluorides; and
>
> "Whereas, this resolution constitutes an emergency in that the same provides for the usual daily operation of a municipal department; now, therefore,
>
> "Be it resolved by the Council of the City of Cleveland:

Section 1. That the Director of Public Utilities be requested to take the steps necessary to begin the treatment of city water with fluorides.

Section 2. That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law."

Implementing ordinances of the City of Cleveland are Ordinance No. 2061-51, Resolution 326-52, Resolution 327-52 and Ordinance No. 585-52, all providing for advertising for bids for fluoridating machinery and purchase of fluoride salts.

QUESTIONS PRESENTED BY THIS APPEAL.

The following questions are presented by this appeal:

1. Is fluoridation a violation of the constitutional rights of individuals to treat their health as they themselves deem best, as guaranteed by the Ist and XIVth Amendments?

2. Is fluoridation a violation of the constitutional right of parents to direct and control their children as guaranteed by the Ist and XIVth Amendments?

3. Is fluoridation, being an experiment, a violation of individual liberty as guaranteed by the Ist and XIVth Amendments?

4. Is fluoridation a violation of the constitutional right of individuals to freedom of religion as guaranteed by the Ist and XIVth Amendments?

STATEMENT OF THE CASE.

1. THE FACTS.

On the 12th day of March, 1951, the City of Cleveland, hereinafter referred to as appellee, passed an ordinance providing for the addition of inorganic fluoride chemicals known as fluorides to the water supply of the City of Cleveland through a water supply system owned and operated by it. This water supply system serves some 800,000 city users and 400,000 suburban users.

The addition of these inorganic fluoride chemicals to the water supply, called fluoridation, has as its intended purpose the reduction of tooth decay, known as dental caries, in the teeth of children aged six to twelve. These fluorides in the water supply have no direct effect on the teeth of adults or children below the age of six or above the age of twelve.

William J. Kraus, hereafter referred to as appellant, is a taxpayer of the City of Cleveland. On the 18th day of June, 1952, he made a proper demand upon the Director of Law of the City of Cleveland under the Ohio taxpayer's statute (Secs. 4311 and 4314 Ohio General Code; Revised Code Secs. 733.56 and 733.59) to cause the ordinances and resolutions providing for fluoridation to be declared invalid. This demand was refused. Thereupon appellant instituted a taxpayer's action in the Common Pleas Court of Cuyahoga County, Ohio, to have these ordinances and resolutions which authorized fluoridation to be declared invalid as unconstitutional and beyond the power of the City of Cleveland for the following reasons:

1. The ordinances and resolutions were an unlawful exercise of the police power of the City of Cleveland and thus unconstitutional.

2. The ordinances and resolutions were in conflict with the laws of the State of Ohio and exceeded the powers granted the City of Cleveland by law.

3. The ordinances and resolutions were beyond the power of the City of Cleveland to enact under charter.

4. The ordinances and resolutions were unreasonable, arbitrary, discriminatory and indefinite.

5. The ordinances and resolutions violated the constitutional guarantee of freedom of religion.

6. The ordinances and resolutions violated the constitutional right to liberty by treating therapeutically for a disease without the consent of the individual.

7. The ordinances and resolutions provided for medical experimentation in violation of constitutional rights.

8. The ordinances and resolutions were invalid as providing for the contamination of food in violation of State and Federal Pure Food and Drug Laws.

9. The ordinances and resolutions were invalid as providing for the practice of medicine, dentistry and pharmacy in conflict with, and violation of, State law.

10. The ordinances and resolutions were invalid as being in conflict with a prior ordinance of the City of Cleveland.

Trial was had in the Common Pleas Court on the following: the pleadings and the admissions contained therein, an agreed statement of facts, and the evidence adduced at trial. The essential elements of each of these three are set forth below.

I. The Admissions Contained in the Answer.

Appellees admitted the following facts in their answer:

1. Plaintiff is a taxpayer of the City of Cleveland and brings this action in that capacity.

2. The sections of the Charter of the City of Cleveland are substantially as set forth in plaintiff's petition.

3. The City of Cleveland is a municipal corporation operating a municipal water works through its Department of Public Utilities, Division of Water and Heat. This water works furnishes water to approximately 1,200,000 customers in Cuyahoga County, approximately 800,000 of whom are in the City of Cleveland, and the remainder in suburban areas.

4. Emil J. Crown is the Director of Public Utilities of the City of Cleveland, and as such, is in charge of and exercises control over its water works.

5. Leonard S. Levy is the Treasurer of the City of Cleveland.

6. Plaintiff made written request upon the Director of Law of the City of Cleveland to bring this action, and the Director of Law declined to do so.

7. Section 673 of the Municipal Code of Cleveland is substantially as set forth in the petition, except it has been renumbered as Section 3.3524 of the Codified Ordinance of the City of Cleveland of 1951.

8. Resolution No. 270-51, Ordinance No. 2061-51 and Ordinance No. 585-52 are substantially as set forth in the petition.

9. Resolutions Nos. 326-52 and 327-52, as adopted by the Board of Control of the City of Cleveland, are substantially as set forth in the petition.

10. Defendant Crown will, unless restrained by order of this Court, execute contracts pursuant to the awards approved by the Board of Control in Board of Control Resolutions Nos. 326-52 and 327-52.

II. Agreed Statement of Facts.

The following facts not covered by admissions in the answer were agreed upon by the parties:

1. Resolutions Nos. 1869-50 and 270-51, and Ordinance No. 996-51, are substantially as set forth in plaintiff's petition.

2. Contracts were prepared pursuant to Board of Control Resolutions Nos. 326-52 and 327-52, but due to the pendency of this action, have not been executed by defendant Crown.

3. The Director of Public Utilities will enter into a contract in the amount of $40,792.00 with Sweeny & Wise Company for furnishing and installing fluoridation equipment unless restrained from so doing by the Court in this action.

4. The Director of Public Utilities will enter into a contract in the amount of $75,290.00 with the John J. Murnane Company for furnishing and installing fluoridation equipment unless restrained from so doing by the Court in this action.

5. To sustain the program of fluoridation of water, the annual cost to the City will be approximately $100,000.00 for fluoride salts, $10,000.00 for supervisory personnel, and $5,000.00 for the maintenance of the fluoridation equipment.

6. The Ordinances and Resolutions passed by the Council of the City of Cleveland in connection with flu-

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oridation (being Resolutions Nos. 270-51, 1869-51, 326-52 and 327-52 and Ordinances Nos. 2061-51, 585-52 and 996-51) have, for their sole object, the introduction of inorganic fluoride chemicals into the drinking water of the City of Cleveland, for the primary purpose of prevention of dental caries in children from age 6 to 12, and to give resistance to tooth decay to said children as a preventative therapeutic agent.

7. The inorganic fluoride chemicals to be introduced into the water of the City of Cleveland will not, and are not intended to have, any effect primarily on the teeth of children under the age of six, or above the age of twelve, or upon adults.

8. The said inorganic fluoride chemicals to be introduced into the drinking water of the City of Cleveland will not, and are not intended to have, any effect on the potability, palatability or purity of the drinking water of the City of Cleveland.

9. The inorganic fluoride chemicals to be introduced into the drinking water of the City of Cleveland will not, and are not intended, to treat any disease which is contagious, malignant or infectious.

10. The said inorganic fluoride chemicals to be introduced into the drinking water of the City of Cleveland are colorless, odorless and tasteless.

11. The Ordinances and Resolutions passed by the Council of the City of Cleveland, providing for the introduction of fluorides into the water system of the City of Cleveland, provide for the introduction of fluorides into the entire water supply system, and all the water supplied thereby. Sixty-five to seventy percent of said water is used industrially, and ten percent of the population, namely the

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age group six to twelve years, are intended to receive the primary benefits therefrom.

12. The City of Cleveland, through its Department of Public Utilities, Division of Water and Heat, sells water to suburban communities in Cuyahoga County, whose residents comprising approximately 400,000 consumers, obtain drinking water through contracts entered into between the City of Cleveland and the suburban governments, which contracts call for the furnishing of pure, potable and palatable water delivered to the mains of said suburban governments.

13. Certain of the taxpayers and consumers of water of the City of Cleveland practice religious beliefs which discourage the taking of medication in any form, although no such groups appeared at any public hearing on the subject of fluoridation and did not object orally or otherwise.

14. The City of Cleveland is the only public agency which owns and maintains a water supply system in the City of Cleveland and Cuyahoga County, Ohio.

15. There is a difference of opinion in the United States as to the value of fluoridation in preventing and reducing dental caries in children and its effect on the health and well-being of the adult population; the introduction of inorganic fluoride chemicals to Cleveland city drinking water is a local experiment which it is anticipated will produce the result of lessened dental caries in children without any ill effects to the health of the people generally.

16. Water is necessary to human life.

17. It is recognized that fluorine, fluorides and other fluorine compounds are chemicals.

18. It is recognized that fluorine is a very toxic substance and its introduction into the Cleveland City drinking water must be accomplished by trained experts to prevent harm to the users thereof. Fluorides are colorless, odorless and tasteless. Ordinarily, the user would have no way of detecting toxic quantities in his drinking water.

19. That the Director of Public Utilities of the City of Cleveland and the Director of Public Health and Welfare of the City of Cleveland have investigated only the feasibility of treating the water supply system of the City of Cleveland with fluorides so far as the mechanical aspects of fluoridation are concerned. They made no investigation as to its ability to prevent dental caries in children or its effects on the health of adults.

20. Fluorides may be directly applied to the teeth of children six to twelve years of age for the same purpose as is accomplished by fluoridation of public drinking water, and this method is called the topical application of fluoride and is performed by a dentist.

21. Unless they are restrained by order of Court or unless the aforementioned legislation should be seasonably repealed, defendant City and its officers will do all things necessary to execute the legislative mandate described in the aforementioned resolutions and ordinances of council.

III. Evidence.

In the late 20's and early 30's investigation disclosed that fluorides occurring naturally in the water supplies in many areas were the cause of mottled enamel, called chronic endemic dental fluorosis, in the teeth of the residents of those areas. Further investigation disclosed

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that this disease was evident in water containing fluorides in the excess of one part per million and strenuous efforts were made to reduce the fluoride content of these water supplies.

Late in the 1930's it was noticed that in areas where the natural water supplies contained one part per million or more of fluorides, a reduction in the incidence of dental caries, or tooth decay, in the residents of that area was also present. Experimentation tended to show that there was some relation between the fluoride content of the water and the incidence of dental caries. From these studies, the United States Public Health Service proposed a theory that Sodium Fluoride added artificially to public water supplies would act in the same manner as natural fluorides, and in a concentration of one part per million, would give resistance to dental caries, and, at the same time, not be accompanied by a marked degree of dental fluorosis.

To test the validity of this theory, there have been initiated experiments set up on a ten or fifteen year basis in seven pilot cities of the United States in which Sodium Fluoride is added to the public water supply in a concentration of one part per million. These experiments, commenced in 1945 and now in progress, will not be completed until the years 1955 to 1960. The sole object of these experiments is to test the theory that artificial fluorides will have the same effect on the teeth of children (the only ones who benefit from fluoridation) as the natural fluorides found in water in some areas.

No studies are being made of the non-dental effect of the sodium fluoride on adults, children, or those suffering from cardio-vascular disease, nephritis, diabetes, arthritis, or other diseases. The only investigation that has been carried on has been a comparison of vital statistics be-

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tween those cities which add sodium fluoride to their water supplies and those who do not.

It is generally agreed that the cause of dental caries is unknown and that the exact method by which fluorides in the water supply accomplishes its alleged purpose is likewise unknown. However, much is known about the nature and action of sodium fluoride.

The expert witnesses of appellee all agree that sodium fluoride, which it was testified would be introduced into the Cleveland water supply system to accomplish fluoridation, was a highly toxic substance, whose most general use, prior to the advent of fluoridation of water, was as a rat poison; that it was not proven that this chemical substance was necessary to sustain life; and that it was, in fact, destructive of the metabolic process of a cell and therefore a poison. One witness did testify that this chemical substance was a nutritional element in life, although he was not a medical doctor. Dr. Knapp, the Health Commissioner of the City, who is a medical doctor, did testify that sodium fluoride is a poison and was not necessary to sustain life and is not a nutritional element in life.

The evidence failed to disclose that the State Board of Health has officially approved any program of fluoridation of public drinking water in the City of Cleveland.

In addition the Court considered the printed transcript of the *Hearings Before the House Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics,* House of Representatives, 82nd Congress, 2d Session, pursuant to House Resolution 74 and House Resolution 447, this House Select Committee being frequently referred to as the "Delaney Committee." The hearings held by the Delaney Committee devoted much time to an exhaustive review of the question of fluoridation and

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examined many expert witnesses all of whom were connected in some manner with the original research on fluorides or fluoridation or scientific fields closely allied thereto.

The final report of the Delaney Committee was introduced into evidence by appellant, this final report concluding from all of the evidence and expert testimony before it that universal fluoridation of public drinking water should not be adopted at this time.

The Trial Court found that the State and Federal constitutional rights of plaintiff and other taxpayers were not violated by said fluoridation legislation; and that the State had the paramount right to treat the bodies of plaintiff and other taxpayers and the bodies of their children as the State saw fit if in its opinion such legislation was for the general welfare. For these reasons and others stated in its opinion, the Trial Court held the fluoridation ordinance and resolutions to be valid and judgment was therefore entered in favor of appellee and against appellant.

From this judgment appellant appealed to the Court of Appeals which affirmed the judgment of the lower Court.

From this adverse judgment of the Court of Appeals, appellant appealed to the Ohio Supreme Court which affirmed the judgment of the Court of Appeals.

From this adverse judgment of the Ohio Supreme Court, appellant now takes his appeal to this Court.

2. HOW THE FEDERAL QUESTION IS PRESENTED.

The Federal constitutional question was preserved throughout the progress of this litigation:

(1) In the Common Pleas Court of Cuyahoga County, Ohio.

The petition alleged as follows:

"Plaintiff says that at all times herein mentioned the following provisions of the Constitution of the United States were in full force and effect:

"Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

"Amendment IV. * * * no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"1. Said ordinances and resolutions providing for the fluoridation of the water and water supply system of the defendant, City of Cleveland, are an unlawful exercise of the police power of defendant, City of Cleveland and are thus unconstitutional under both the Federal and Ohio Constitutions.

"5. Said ordinances and resolutions providing for the fluoridation of water and the water supply system of the defendant, City of Cleveland, violate state and federal constitutional guarantees of freedom of religion, in that certain of the taxpayers of the City of Cleveland practice religious beliefs which discourage the taking of any medication and this ordinance compels them to use water treated with fluoride chemicals for medicinal purposes thereby infringing on their right to freely practice their religion according to the dictates of their own conscience.

"6. Said ordinances and resolutions are void and illegal because they provide for the medical treatment of substantially all the population of the City of Cleveland with an alleged therapeutic chemical agent without their individual consent and thus in violation of their fundamental constitutional rights as free men.

"7. Said ordinances and resolutions providing for the fluoridation of the water and water supply system of the defendant, City of Cleveland, are void and illegal because they result in medical experimentation on the population of the City of Cleveland, accurate medical proof of the value of fluoridation not yet being available, and compels said population to submit to such experimentation without their consent, all in violation of their fundamental constitutional rights."

(2) In the Court of Appeals of Cuyahoga County, Ohio.

The Assignments of Error filed on behalf of plaintiff in the Court of Appeals were as follows:

"1. The court erred in holding that the fluoridation ordinances and resolutions of the City of Cleveland do not violate the rights of the individual to personal liberty to treat his health as he deems best, as guaranteed by the Federal and State Constitutions.

"2. The court erred in holding that the fluoridation ordinances and resolutions do not violate the right of parents to their personal liberty to rear and care for their children as they deem best as guaranteed by the Federal and State Constitutions.

"3. The court erred in holding that the fluoridation ordinances and resolutions do not constitute medical experimentation on the individual and in holding that fluoridation does not constitute an invasion of personal liberty free from such experimentation as guaranteed by the Federal and State Constitutions.

"4. The court erred in holding that the fluoridation ordinances and resolutions do not violate the right of the individual to freedom of religion as guaranteed by the Federal and State Constitutions.

"10. The court erred in ruling that the fluoridation ordinances and resolutions are not in conflict with the Constitution and laws of the State of Ohio, and the Constitution of the United States."

(3) In the Supreme Court of Ohio.

The Assignments of Error filed on behalf of plaintiff were as follows:

"2. The said Court of Appeals erred in holding that the ordinances and resolutions of the City of Cleveland providing for the fluoridation of the city water supply did not violate the personal liberty guaranteed to individuals to treat their health as they deem best, which personal liberty is guaranteed by the Constitution of Ohio and the Constitution of the United States.

"3. The said Court of Appeals erred in holding that the ordinances and resolutions of the City of Cleveland providing for the fluoridation of the city water supply do not violate the parental right to safeguard the health of their children as they deem best, which right is guaranteed by the Constitution of Ohio and the Constitution of the United States.

"4. The said Court of Appeals erred in failing to hold that the fluoridation of the city water supply, which is an experiment, constitutes an invasion of personal liberty contrary to the rights guaranteed by the Constitution of Ohio and the Constitution of the United States.

"5. The said Court of Appeals erred in failing to hold that the fluoridation of the city water supply violated the right to freedom of religion which is guaranteed by the Constitution of Ohio and the Constitution of the United States.

"10. The said Court of Appeals erred in holding the ordinances and resolutions of the City of Cleveland providing for fluoridation were a valid exercise of the police power of the City of Cleveland under the rule of law announced by the Supreme Court of the United States in the case of Jacobson vs. Massachusetts, 197 U. S. 11."

(4) Appellant also filed an Application for Re-Hearing in the Supreme Court of Ohio wherein he stated:

"Now comes William J. Kraus, a taxpayer, plaintiff-appellant in the above entitled cause, and respectfully applies for a re-hearing of the appeal in the within case for the reason that the decision did not:

"2. Recognize the limitation upon the police power announced in the case of Jacobson vs. Massachusetts, 197 U. S. 11."

3. THE CHIEF JUSTICE OF THE OHIO SUPREME COURT HAS CERTIFIED THAT FEDERAL CONSTITUTIONAL QUESTIONS WERE PRESENTED AND PASSED UPON BY THE COURT.

Attached to the jurisdictional statement as Exhibit D and filed separately in this Court with the papers and transcript of the Ohio Supreme Court is a certificate of the Ohio Supreme Court which certifies that Federal constitutional questions were presented in this case and were passed upon by the court.

It is thus obvious that the Chief Justice of the Ohio Supreme Court found that the appeal did raise the Federal constitutional questions and that the Supreme Court of Ohio did make a decision in respect thereof adverse to the appellant.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

There are two simple and fundamental questions which arise in this case and without abandoning all other questions presented, appellant urges their high importance:

1. Is the state or local government to have the right to compel the medical treatment of individuals without reference to their consent?

2. And can the water of a community become the vehicle whereby this newly established function and right of the state or local government to medically treat its citizens is carried out?

In essence these questions strike at the very root of our American way of life.

While government has become more complex with the impact of individual upon individual in our highly industrialized and integrated society—and as a result individual liberties have necessarily been reduced in favor of the general welfare of all the people—nevertheless, the courts have, wherever possible, sought to retain the safeguards surrounding the fundamental rights and liberties of individuals as guaranteed in the state and federal constitutions.

This proposition is illustrated in the pronouncement by this Court in the celebrated case of *Jacobson vs. Massachusetts,* 197 U. S. page 11 decided in 1905 wherein this Court laid down the ground rules governing the extent to which and the limited instances whereby the state could, through the exercise of its police power, curtail the rights of free people in our free society.

We can all agree that the American system of government in principle still respects the rights of individuals, as opposed to the rights of the state, and that the individual American citizen retains his dignity and liberty and the

right to treat his own body and the bodies of his children as he sees fit; that while in other countries the individual has become the pawn of the state, with no rights or respect or consideration, we in America have continued to uphold our highest traditions of liberty and dignity of the individual in our society.

Nevertheless, the ready acceptance of fluoridation by legislative bodies and courts affecting large segments of our population gives one cause for grave concern as to the practical application of our concepts of liberty and respect for individuals in this country today.

Certainly we cannot and must not permit the basic and underlying principles of freedom as enunciated by our founding fathers to be destroyed by permitting the enactment of laws which convert our water supply system into a vehicle for medicine forced upon individuals without regard to their consent.

Probably no question in the field of public health law since vaccination has caused as much comment and fostered as much litigation as has the question of legislation concerning the fluoridation of city water supplies.

Nor has any question resulted in so many published periodicals and so much public discussion. Congressional committees on two occasions (1952 Delaney Committee of Congress; 1954 Committee on Interstate and Foreign Commerce, House of Representatives) held extensive hearings at which diametrically conflicting national authorities have testified both as to the permanent benefits of fluoridation in preventing dental caries and the long range detrimental non-dental effects of fluoridation, particularly on the aged and those suffering from cardio-vascular diseases, nephritis, diabetes and other debilitating diseases.

At least six law review articles have been published which discussed the instant case. 23 *George Washington*

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Law Review 343; 21 *Hastings Law Review* 1; 23 *Journal of the Bar Association of Kansas* 383; 15 *Louisiana Law Review* 817; 4 *Utah Law Review* 416; 57 *West Virginia Law Review* 205.

This fluoridation issue has been to our knowledge, presented to this Court on three occasions. Unfortunately none of these three cases has presented all of the fundamental Federal questions in their full scope.

In *DeAyran v. Butler,* cert. den. 347 U. S. 1012, the sole question presented for consideration was that fluoridation constituted, as to the citizens of the community, a "trespass upon their persons." On this question, the leading case of *Jacobson v. Massachusetts* was not even cited. Not presented were the questions of violation of religious freedom, infringement of parental rights, and, freedom from medical experimentation.

In *Dowell v. City of Tulsa,* cert. den. 348 U. S. 912, while the questions of individual liberty and religious freedom were sketchily presented, the questions of parental rights and medical experimentation were not advanced or urged.

The case of *Chapman v. City of Shreveport* dismissed for want of substantial federal question, 348 U. S. 892, presented in this Court primarily the question of individual rights. Again not discussed were the questions of experimentation, parental rights and freedom of religion, and in fact this case in the Trial Court rested more or less on the question of municipal power.

From the foregoing analysis it is obvious that the three cases previously submitted to this Court did not fully and clearly present the fundamental and all-important constitutional questions raised by fluoridation.

These questions are, we submit, fully present and raised in the instant case.

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We, therefore, urge this Honorable Court that it is time to again re-examine and re-state the basic ground rules governing our society and American way of life as enunciated in 1905 in the *Jacobson* case. Perhaps the passage of time has dimmed our memories and a fresh re-statement of fundamental principles is necessary to clear the stale and confusing air that may have crept in over the past fifty years.

CONCLUSION.

Appellant urges that probable jurisdiction should be noted because of the substantial nature of the questions presented and the great public interest in the validity of fluoridation. We cannot believe that American liberty has come to mean that an individual's body may, without his consent, be invaded with medicines and chemicals, to combat a disorder which is not contagious, malignant or infectious. We submit that this Court must re-examine and re-state emphatically its decision in the *Jacobson* case before so startling and unusual a doctrine as fluoridation is permitted to become lawful in this country.

Respectfully submitted,

WILLIAM J. KRAUS,
In Propria Persona,
331 Leader Building,
Cleveland 14, Ohio.

APPENDIX A.

Opinion of the Supreme Court of Ohio, 163 O. St. 559.

Municipal corporations—Police power—Public health—Prevention and control of dental caries—Legislation for fluoridation of city water—Constitutional law—General laws relative to adulteration and medical practice not contravened.

1. Prevention and control of dental caries, a common disease of mankind, is a proper subject, in relation to public health, for legislation enacted pursuant to the police power vested in municipalities by the general laws and the Constitution of the state of Ohio.

2. The enactment of legislation by the city council of Cleveland providing for fluoridation of the Cleveland water supply, by the introduction of inorganic fluoride chemicals therein, constitutes neither an infringement of the constitutional liberties of the citizens of such municipality nor an exercise of power in contravention of the general laws in relation to adulteration or the practice of medicine.

(No. 34190—Decided June 29, 1955.)

APPEAL from the Court of Appeals for Cuyahoga County.

The city of Cleveland owns and operates a municipal water department which supplies water to the inhabitants of said city and surrounding territory.

After public hearings thereon, certain ordinances and resolutions were passed and adopted providing for the fluoridation of such water, for the purpose of preventing dental caries.

Whereupon the plaintiff, appellant herein, brought a taxpayer's action, seeking a permanent injunction restraining the city and others, appellees herein, from expending

money for the fluoridation of the water and from entering into any contracts therefor, to declare the resolutions and ordinances unconstitutional and void and to declare void any contract already entered into.

It is unnecessary to make an extensive review of the evidence before the trial court. It consists of testimony and exhibits as to the value and effect of fluoridation as a preventive of dental caries.

MATTHIAS, *J.* Essentially, the plaintiff attacks the legislation on two grounds, first, that it infringes upon certain of his fundamental liberties, and, second, that it conflicts with certain statutes of the state and is beyond any power granted to municipalities by the laws and the Constitution of Ohio.

The police power is vested in municipalities by Section 3, Article 18 of the Ohio Constitution, which is as follows:

> "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

By Sections 3616 and 3646, General Code (Section 715.37, Revised Code), municipal corporations are authorized "to provide for the public health."

The basic question presented by this case is whether a municipality has the authority under its police power, in relation to public health, to add inorganic fluoride chemicals to its water supply, where such addition will not and is not intended to have any effect on the potability, palatability or purity of such drinking water but has for its sole purpose the prevention of dental caries.

The plaintiff contends that the prevention or treatment of diseases of the teeth is a matter of private health and not of public health, and that the addition of fluoride chemicals to the water supply constitutes an invasion of his constitutional liberties to treat his health as he deems best, his right as a parent to safeguard the health of his children as he deems best, his right to be free from medical experimentations and his right of freedom of religion.

The personal liberties granted by the Constitution, although broad and on the whole inviolate, are nevertheless subject to certain qualifications and restraints and are generally held to be subject to a valid exercise of the police power. The Supreme Court of the United States in discussing constitutional liberties has said:

> "Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interest of the community." *Chicago, Burlington & Quincy Rd. Co. v. McGuire*, 219 U. S. 549, 55 L. Ed. 328, 31 S. Ct. 259.

The Supreme Court of the United States in *Jacobson v. Massachusetts*, 197 U. S. 11, 26, 49 L. Ed. 643, 25 S. Ct. 358, in holding a compulsory vaccination statute constitutional, said in regard to constitutional liberties:

> "The defendant insists that his liberty is invaded when the state subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all

times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the Legislature to do which no question ever was, or upon acknowledged general principles ever can be made, so far as natural persons are concerned.' "

The plaintiff, while admitting that personal liberties are not wholly free from restraint, contends that, for a valid exercise of the police power on the basis of public health, the subject matter of the regulation must relate to contagious or infectious diseases, and that there must exist an overriding necessity.

In regard to this, it is sufficient to say there is no foundation in law for such a premise. An examination shows that laws relating to child labor, minimum wages for women and minors and maximum hours for women and minors have all been upheld on the basis of the police power in relation to public health. Regulations relating to control of venereal disease, blood tests for marriage licenses, sterilization, pasteurization of milk, chlorination of water and vaccination have all been held valid as based on police power exercised in regard to public health.

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Clearly neither an overriding public necessity or emergency nor infectious or contagious diseases are the criteria which authorize the exercise of the police power in relation to public health.

That dental caries is a disease is not questioned, and its prevalence is well recognized, as is the fact that the health of the teeth bears a direct relationship to general physical health. In sustaining a similar fluoridation statute, the court in *Dowell v. City of Tulsa* (Okla.), 273 P. (2d) 859, 863, stated:

> "The relation of dental hygiene to the health of the body generally is now so well recognized as to warrant judicial notice."

Thus the fact that dental caries is neither infectious nor contagious does not remove it from the authority of a municipality to attempt its control by fluoridation of the water supply.

In *Kaul v. City of Chehalis* (Wash.), 277 P. (2d) 352, 354, the Supreme Court of Washington, in a decision upholding fluoridation legislation, said:

> "Dental caries is neither infectious nor contagious. This, however, does not detract from the fact that it is a common disease of mankind. As such, its prevention and extermination come within the police power of the state."

In considering the same subject, the Supreme Court of Louisiana, in *Chapman v. City of Shreveport,* 225 La. 859, 74 So. (2d) 142, said:

> "The appellees insist, and the district judge concluded, that fluoridation of the water to prevent tooth decay is not a matter of public health, but a matter of private health and hygiene. The evidence in this record refutes overwhelmingly this conclusion. Dental caries is one of the most serious health problems in

> the city of Shreveport, and in the nation as well. The fact that it is not a communicable disease and one that can cause an epidemic does not detract from its seriousness as affecting the health and well-being of the community. The plan for fluoridation, therefore, bears a reasonable relation to the general welfare and the general health of the community, and is a valid exercise of the power conferred by section 2.01 of the charter if it is not arbitrary or unreasonable."

It is argued that the same result might be accomplished by private dental care, and, since there is an alternative to public regulation, the police power may not be invoked. Although it is admitted that private care would be as effective, the record shows that there are not sufficient private dental facilities to perform the task. Under our modern existence the law must change and expand with mechanical and scientific progress. What did not concern public health yesterday, because of an inability of science to cope with the problem at hand, may very well today become a matter of public health due to scientific achievement and progress. The use of fluoridation to prevent dental caries is an excellent example of this proposition. Science has discovered a method whereby dental caries may be diminished. The prevalence and danger of such caries are well known and the only practicable application of such scientific knowledge is by treating drinking water with fluoride. Thus the problem of dental caries has of necessity become one of public health.

Nor does the fact that the fluoride, instead of killing germs, builds up a resistance to the disease have any effect on the validity of fluoridation legislation. The court in *Dowell v. City of Tulsa, supra,* 863, disposed of this question, in the following language:

> "Plaintiffs concede, as they must, that municipalities may chlorinate their water supply, *Common-*

wealth v. Town of Hudson, 315 Mass. 335, 52 N. E. (2d) 566; McQuillin Municipal Corporations (3d Ed.), Vol. 7, Sec. 24.265 and though they contend, under one proposition, that a city's treatment of its water supply with fluorides is the unlicensed practice of medicine, dentistry and pharmacy under our statutes, they here argue that such treatment must be distinguished from treatment with chlorides, because the latter will kill germs, purify water and accordingly aid in the prevention and spread of disease, whereas fluorides will not. We think that if the putting of chlorides in public water supplies will in fact promote the public health, the distinction sought to be drawn by plaintiffs is immaterial. To us it seems ridiculous and of no consequence in considering the public health phase of the case that the substance to be added to the water may be classed as a mineral rather than a drug, antiseptic or germ killer; just as it is of little, if any, consequence whether fluoridation accomplishes its beneficial result to the public health by killing germs in the water, or by hardening the teeth or building up immunity in them to the bacteria that causes caries or tooth decay. If the latter, there can be no distinction on principle between it and compulsory vaccination or inoculation, which, for many years, has been well established as a valid exercise of police power."

Although it is true that the actual active effect of fluoridation is confined to that period of a person's life while the teeth are developing, such benefits extend on into adult life and fluoridation legislation is not such class legislation as to invalidate it.

In *Chapman v. City of Shreveport, supra,* 145, the court answers that argument, as follows:

"Although the immediate purpose of the proposed fluoridation is to retard and decrease the disease of dental caries in young children, the protection thus

given will continue well into adult life. Not only will the proposed fluoridation retard and reduce this disease in the generation of children presently in Shreveport, but its effect will continue into their adult life, and consequently the proposed measure will ultimately be beneficial to all the residents of the city.

"The health of the children of a community is of vital interest and of great importance to all the inhabitants of the community. Their health and physical well-being is of great concern to all the people, and any legislation to retard or reduce disease in their midst cannot and should not be opposed on the ground that it has no reasonable relation to the general health and welfare. Children of today are adult citizens of tomorrow, upon whose shoulders will fall the responsibilities and duties of maintaining our government and society. Any legislation, therefore, which will better equip them, by retarding or reducing the prevalence of disease, is of great importance and beneficial to all citizens. In our opinion the legislation does bear a reasonable relation to public health."

It is clear from the record that the fluoridation of water for the prevention of dental caries has progressed far beyond the experimental period and has now become an established method. The facts that there are still differences of opinion as to its value and effect by a number of persons and that there are certain questions unanswered in relation to fluoridation do not make it an experiment. There are dissenters to many established and proved scientific practices which are accepted today. Dissent to scientific method does not constitute such method an experiment, and plaintiff's contention that fluoridation constitutes experimentation is without foundation.

Plaintiff's argument that fluoridation constitutes mass medication, the unlawful practice of medicine and adul-

teration may be answered as a whole. Clearly, the addition of fluorides to the water supply does not violate such principles any more than the chlorination of water, which has been held valid many times.

It was said in *Dowell v. City of Tulsa, supra,* 864:

> "Plaintiffs do not elaborate on their contention that ordinance 6565 is in violation of the 'free exercise' of religion, which, in the First Amendment of the United States Constitution, Congress is forbidden to prohibit, but we assume this is based on the hypothesis that the fluoridation prescribed in the ordinance is a form of 'medication' or 'medical treatment' forbidden by the tenets of one or more well known churches or religious sects. This argument is closely allied to one phase of the plaintiffs' 'proposition 4' to the effect that fluoridation is treatment of a disease and therefore that the ordinance constitutes the unlicensed practice of medicine as defined and forbidden in Title 59 O. S. 1951, Sections 495b and 497. To what was said concerning a similar argument in *De Aryan v. Butler, supra,* which we hereby approve and adopt, we wish to add our opinion that in the contemplated water fluoridation, the city of Tulsa is no more practicing medicine or dentistry or manufacturing, preparing, compounding or selling a drug, than a mother would be who furnishes her children a well balanced diet, including foods containing vitamin D and calcium to harden bones and prevent rickets, or lean meat and milk to prevent pellagra. No one would contend that this is practicing medicine or administering drugs."

To summarize:

I. Athough dental caries does not constitute a contagious or infectious disease, it is a disease so common and so widespread that it is a proper subject, in relation to public health, for a municipal corporation to act upon in the exercise of the police power.

II. The introduction of inorganic fluoride chemicals in its municipal drinking water does not constitute an infringement of the constitutional liberties of the citizens of such municipality or an exercise of power in contravention of the general laws in relation to adulteration or practice of medicine.

The judgment of the Court of Appeals is affirmed.

Judgment affirmed.

WEYGANDT, C. J., HART, ZIMMERMAN, STEWART, BELL and TAFT, JJ., concur.

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APPENDIX B.

Judgment of the Supreme Court of Ohio.

June 29, 1955.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellees recover from the appellant their costs herein expended taxed at $_____.

ORDERED, That a special mandate be sent to the Court of Common Pleas of Cuyahoga County, to carry this Judgment into Execution.

ORDERED, That a copy of this entry be certified to the Clerk of the Court of Appeals, of Cuyahoga County, "for entry."

(Duly certified.)

APPENDIX C.

Order of the Supreme Court of Ohio Denying Rehearing.

September 28, 1955.

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

(Duly certified.)

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APPENDIX D.

Certificate of the Supreme Court of Ohio as to Existence of a Federal Question.

On motion of plaintiff-appellant, William J. Kraus, this Court in addition to the orders made herein, orders it to be certified and made a part of the record in this case and of the judgment and entry of affirmance heretofore rendered and made herein, that in the appeal from the Court of Appeals of Cuyahoga County, Ohio, and in the arguments, both oral and by brief, made in this court on behalf of plaintiff-appellant, it was insisted and relied upon by plaintiff-appellant that the ordinance in question providing for fluoridation of the drinking water of the City of Cleveland was void for the following reasons:

1. Fluoridation is a violation of the constitutional rights of individuals to treat their health as they themselves deem best as guaranteed by Amendment XIV of the Constitution of the United States.

2. Fluoridation is a violation of the constitutional rights of parents to direct and control their children as guaranteed by Amendment XIV of the Constitution of the United States.

3. Fluoridation, being an experiment, is a violation of individual liberty guaranteed by Amendment XIV of the Constitution of the United States.

4. Fluoridation is a violation of the constitutional right of individuals to freedom of religion as guaranteed by Amendments I and XIV of the Constitution of the United States;

and that said Federal constitutional questions were set forth in the opinion of this Court as follows (p. 560): "The plaintiff contends that the prevention of a treatment of diseases of the teeth is a matter of private health and not of public health, and that the addition of fluoride chemi-

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cals to the water supply constitutes an invasion of his constitutional liberties to treat his health as he deems best, his right as a parent to safeguard the health of his children as he deems best, his right to be free from medical experimentations and his right of freedom of religion."

The court further certifies that defendants-appellees in their brief and oral arguments contended the contrary to plaintiff-appellant's claim of invasion of his Federal constitutional guarantees and rights as set forth above.

This court further certifies that it rejected plaintiff-appellant's contentions and held adversely to him and sustained the validity of the ordinance of the City of Cleveland, Ohio in question, in its construction of the Constitution of the United States as appears in the entry and judgment of affirmance heretofore made herein and the written opinion of this court reported in 163 Ohio State 559.

The court further certifies that its decision with respect to the legality and validity of the ordinance of the City of Cleveland authorizing fluoridation of the Cleveland water supply is a final judgment of this court; and that this court is the highest court of law and equity in the State of Ohio in which a decision of this case could be held.

IT IS HEREBY ORDERED that this certificate which is concurred in by all of the judges of the court, be made part of the record in this case.

CARL WEYGANDT, *Chief Justice.*

Dated: Oct. 19, 1955.

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HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

No. 693.

OCTOBER TERM, 1955.

WILLIAM J. KRAUS,
A Taxpayer on Behalf of the City of Cleveland,
Appellant,

vs.

CITY OF CLEVELAND, *et al.*,
Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

MOTION TO DISMISS APPEAL
and
BRIEF IN SUPPORT THEREOF.

RALPH S. LOCHER,
Director of Law,
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CITY OF CLEVELAND, *et al.*,
Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

MOTION TO DISMISS APPEAL.

Now comes the appellees herein and move this Court for an order dismissing the appeal filed by appellant, for the reason that it does not present a substantial federal question; that no debatable constitutional question is involved in said cause; and further, that no question arising under the Constitution of the United States is involved in said cause.

RALPH S. LOCHER,
Director of Law,

JOSEPH H. CROWLEY,
Chief Counsel,

WILLIAM T. MCKNIGHT,
Assistant Director of Law,
Attorneys for Appellees.

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In the Supreme Court of the United States

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WILLIAM J. KRAUS,
A Taxpayer on Behalf of the City of Cleveland,
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Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

STATEMENT OF THE CASE.

The facts presented in appellant's brief are, for the purpose of this motion, admitted to be substantially correct. Together with the Agreed Statement of Facts (appellant's brief page 8) and The Admissions Contained In the Answer (appellee's pleading in court of first instance) (appellant's brief page 7), the gravamen of appellant's position is clearly before this Court.

ARGUMENT.

Appellant here contends that this Court should entertain jurisdiction and re-examine the issues here involved and make a pronouncement contrary to that laid down by the Supreme Courts of the states of California, Oklahoma and Louisiana. An attempt has been made to distinguish the instant case from *DeAryan v. Butler, Mayor, et al.* (Cal.), 260 P. 2d 98, cert. den., 347 U. S.

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1012; *Dowell, et al. v. City of Tulsa, et al.* (Okla.), 273 P. 2d 859, cert. den., 348 U. S. 912; and *Chapman, et al. v. City of Shreveport* (La.), 74 So. 2d 142, dismissed for want of substantial federal question, 348 U. S. 892. For his authority on the position taken, appellant cites *Jacobson v. Massachusetts*, 198 U. S. 11. We shall hereinafter discuss the applicability or inapplicability of each case to the facts at hand.

To substantiate his position that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented, appellant, in his brief at page 19, poses "two simple and fundamental questions" couched in the following language:

> "1. Is the state or local government to have the right to compel the medical treatment of individuals without reference to their consent?
>
> "2. And can the water of a community become the vehicle whereby this newly established function and right of the state or local government to medically treat its citizens is carried out?"

This Court is undoubtedly familiar with all the issues raised and decided in *Jacobson v. Massachusetts, supra*, as well as dictum with reference to collateral matters not essential to its decision. The seventh, eighth and ninth paragraphs of the syllabus, at pages 11-12, read as follows:

> "It is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, and not for the courts, to determine in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection of the public health.
>
> "There being obvious reasons for such exception, the fact that children, under certain circumstances, are excepted from the operation of the law does not deny the equal protection of the laws to adults if the

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statute is applicable equally to all adults in like condition.

"The highest court of Massachusetts not having held that the compulsory vaccination law of that State establishes the absolute rule that an adult must be vaccinated even if he is not a fit subject at the time or that vaccination would seriously injure his health or cause his death, this court holds that as to an adult residing in the community, and a fit subject of vaccination, the statute is not invalid as in derogation of any of the rights of such person under the Fourteenth Amendment."

The case above cited has stood unchallenged since the court's decision was enunciated in 1905. Its principles are applicable to the instant case and excerpts from the very able opinion written by Mr. Justice Harlan have been repeated many times in cases of this nature. We, therefore, do not hesitate to quote again to this Court from said opinion.

Referring to the text of the case of *Biemeister v. White, President, Etc.*, decided by the Court of Appeals of New York and reported in 72 N. E. 97, which came to this Court on a test of the validity of the statute excluding from the public schools children who had not been vaccinated, this court quoted as follows, at page 34:

"It must be conceded that some laymen, both learned and unlearned, and some physicians of great skill and repute, do not believe that vaccination is a preventive of smallpox. The common belief, however, is that it has a decided tendency to prevent the spread of this fearful disease and to render it less dangerous to those who contract it. While not accepted by all, it is accepted by the mass of the people, as well as by most members of the medical profession. It has been general in our State and in most civilized nations for generations. It is generally accepted in

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theory and generally applied in practice, both by the voluntary action of the people and in obedience to the command of law. Nearly every State of the Union has statutes to encourage, or directly or indirectly to require, vaccination, and this is true of most nations of Europe * * *.

"A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts * * *.

"The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adopted to prevent the spread of contagious diseases. In a free country, where the government is by the people, through their chosen representatives, practical legislation admits of no other standard of action; for what the people believe is for the common welfare must be accepted as tending to promote the common welfare, whether it does in fact or not. Any other basis would conflict with the spirit of the Constitution, and would sanction measures opposed to a republican form of government. While we do not decide and cannot decide that vaccination is a preventive of smallpox, we take judicial notice of the fact that this is the common belief of the people of the State, and with this fact as a foundation we hold that the statute in question is a health law, enacted in a reasonable and proper exercise of the police power. 72 N. E. Rep. 97."

Since appellant has in his brief cited the *Jacobson* case as laying down the "ground rules governing the extent to which and the limited instances whereby the state could, through the exercise of its police power, curtail the rights

of free people in our free society," it would seem that the case is directly in support of the position taken by the City of Cleveland in legislating through its Council that the addition of fluorides to the public water supply is a health measure and that such action is clearly within the confines established. The question involved is not whether all or most of the citizens are or have been convinced that the beneficial effects of fluoridation of the public water supply is or is not to their liking, but rather, whether or not upon the evidence presented, the Cleveland City Council acted within its constitutional authority in passing legislation permitting its use.

Appellant, in his brief, at page 21 says:

> "Unfortunately, none of these three cases (referring to DeAyran v. Butler, Dowell v. City of Tulsa and Chapman v. City of Shreveport, supra) has presented all of the fundamental Federal questions in their full scope."

Referring to the *DeAryan* case, appellant says that the questions of violation of religious freedom, infringement of parental rights, and freedom from medical experimentation were not presented. Further, he says that in the *Dowell* case, the question of parental rights and medical experimentation were not advanced or urged and that in the *Chapman* case, the issues of experimentation, parental rights and freedom of religion were not properly considered by the court. With respect to all of these claims, appellees disagree and state categorically that appellant has overlooked the most salient features of each case.

In *DeAryan v. Butler, supra,* at page 103, the court spoke as follows:

> "The United States Supreme Court, in establishing and clarifying the Constitutional right of religious and other freedoms, has distinguished between the direct

compulsions imposed upon individuals, with penalties for violations, and those which are indirect or reasonably incidental to a furnished service or facility. Hamilton v. Regents of University of California, 293 U. S. 245, 55 S. Ct. 197, 79 L. Ed. 343; West Virginia State Board of Education v. Barnette, 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628; Cantwell v. State of Connecticut, 310 U. S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213."

The evidence adduced at the trial of this cause, in the court of first instance, bears directly on the proposition heretofore stated, namely: That the ordinance had no intendment that any person should be required to use the water furnished by the city for drinking purposes, if, for any reason, he objected to its contents. Had the ordinance so provided and the state upheld such contention, there might have been some validity to appellant's argument that "forced medication" was being imposed upon persons whose religious beliefs and principles were in opposition to the same. Appellant and others so disposed may purchase for themselves, from whatever source they choose, the kind of water they wish to drink if, because of religious beliefs, they are convinced that "fluoridated" water is a medication.

There seems to be no constitutional grounds upon which appellant bases his objection to fluoridation of the water supply as an infringement of parental rights. It is well settled that the law recognizes no absolute right of the parent to determine in all matters how his child shall be reared. This Court can take judicial notice of the breadth and scope of the laws conferring upon Juvenile Courts power to supervise, in one way or another, the activities of minor children. So it is with Child Labor Laws, compulsory school attendance, curfew laws and many others too numerous to set forth herein. When the

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court speaks of the right to preserve order and protect the health of the people under its police power, it does so with respect to persons of all ages.

Whether or not the issue of interference with parental control was stressed, it was disposed of in the all inclusive language used at page 145 in *Chapman v. City of Shreveport, supra,* where the court said:

> "The health of the children of a community is of vital interest and of great importance to all the inhabitants of the community. Their health and physical well-being is of great concern to all the people, and any legislation to retard or reduce disease in their midst cannot and should not be opposed on the ground that it has no reasonable relation to the general health and welfare. Children of today are adult citizens of tomorrow, upon whose shoulders will fall the responsibilities and duties of maintaining our government and society. Any legislation, therefore, which will better equip them, by retarding or reducing the prevalence of disease, is of great importance and beneficial to all citizens. In our opinion the legislation does bear a reasonable relation to public health."

That case was dismissed by this Court for want of substantial federal question. 348 U. S. 892.

Appellant's contention that the matter of "parental rights" was overlooked and neglected by this Court in considering the issues in the *Chapman* case fails when viewed in the light of Rule 40, 1(d)(1) that "the statement of a question presented will be deemed to include every subsidiary question fairly comprised therein." In speaking of "the health of the children of a community," Judge Hawthorne of the Supreme Court of Louisiana was certainly mindful of the fact that the benefits accruing to children of tender age were such as could properly be legislated, irrespective of the wishes of their parents. This

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Court undoubtedly read that language before it dismissed the appeal.

Referring to *Dowell v. City of Tulsa, supra*, appellant, at page 21 of his brief, says:

> "While the questions of individual liberty and religious freedom were sketchily presented, the questions of parental rights and medical experimentation were not advanced or urged."

We here call the attention of the Court to the second syllabus of the opinion of the Oklahoma Supreme Court at page 860, which reads as follows:

> "2. To the extent that such power is delegated to it under this State's constitution and statutes, a municipality may by proper ordinance provide for the fluoridation of its water supply without contravening the First and the Fourteenth Amendments of the U. S. Constitution."

And further, at page 864 the court says:

> "Plaintiffs do not elaborate on their contention that Ordinance 6565 is in violation of the 'free exercise' of religion, which, in the First Amendment of the United States Constitution, Congress is forbidden to prohibit, but we assume this is based on the hypothesis that the fluoridation prescribed in the Ordinance is a form of 'medication' or 'medical treatment' forbidden by the tenets of one or more well-known churches or religious sects. This argument is closely allied to one phase of the plaintiffs' 'Proposition 4' to the effect that fluoridation is treatment of a disease and therefore that the Ordinance constitutes the unlicensed practice of medicine as defined and forbidden in Title 59 O. S. 1951 §§ 495b and 497. To what was said concerning a similar argument in DeAryan v. Butler, supra, which we hereby approve and adopt, we wish to add our opinion that in the contemplated water fluoridation, the City of Tulsa is no more prac-

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ticing medicine or dentistry or manufacturing, preparing, compounding or selling a drug, than a mother would be who furnishes her children a well-balanced diet, including foods containing vitamin D and calcium to harden bones and prevent rickets, or lean meat and milk to prevent pellagra. No one would contend that this is practicing medicine or administering drugs. This conclusion also disposes of the contention that the Ordinance constitutes a violation of Title 59 O. S. 1951 §§ 273 and 333, wherein plaintiffs employ what a California Judge is said to have termed an 'over-refinement' in the application of definitions to facts."

A careful study of the three cases cited, and from which excerpts have been quoted, refute the four points raised in appellant's brief and his contention that they have not been answered by this Court, namely, that the ordinance in question is violative of the constitutional guarantees contained in the First and Fourteenth Amendments to the Constitution, in that it—the ordinance—violates: 1. Religious Freedom; 2. Parental Control; 3. Forced Medication; and 4. Experimentation With the Human Body. Each of these points was raised in some fashion in one or more of the three cases which this Court has seen fit to refuse to hear on the grounds that no substantial federal question had been raised.

Appellant has included in his brief reference to six Law Review Articles, all of which have been read and carefully considered by appellee. It is submitted that the writer of each article merely poses questions which have been raised in his mind as a result of his study, but in no one of said articles is a case made or suggested that local legislation permitting the fluoridation of public water supplies is violative of constitutional rights and liberties. To quote from one of these articles entitled "Municipal Corporations—Constitutional Law—Validity of Fluorida-

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tion of Public Water Supply," 23 Journal of the Bar Association of Kansas 383, at the bottom of page 384, at the conclusion of a discussion of all of the cases included herein, the Editor says:

> "A pattern for decision in relation to the fluoridation question has been established by these able state courts. It may now safely be said that cities do have the police power to establish fluoridation in city water supplies if they desire to exercise it."

At most, these Law Review Articles are opinions of students and professors and are in no way decisive or controlling. The most that can be said for them is that the question is one of wide public interest. However, no great body of opinion or evidence has yet been adduced which has not been properly brought before this Court in the cases which preceded the one at bar.

CONCLUSION.

Appellees have failed to find an issue presented by appellant which is of a substantial character or a proposition of law in conflict with the decision of this Court in the *Jacobson* case. We submit, therefore, that the appeal of appellant should be dismissed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 693.

WILLIAM J. KRAUS,
A Taxpayer on Behalf of the City of Cleveland,
Appellant,

vs.

CITY OF CLEVELAND, *et al.*,
Appellees.

BRIEF OF APPELLANT IN OPPOSITION TO APPELLEES' MOTION TO DISMISS.

WILLIAM J. KRAUS,
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Cleveland 14, Ohio.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5847

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Appellees.

BRIEF OF APPELLANT IN OPPOSITION TO APPELLEES' MOTION TO DISMISS.

We have carefully examined the arguments advanced on behalf of appellees in support of their motion to dismiss the appeal. While no important or telling points have been made, nevertheless a few comments may be in order.

I. THE JACOBSON CASE DOES NOT AUTHORIZE COMPULSORY FLUORIDATION OF PUBLIC DRINKING WATER.

A reading of appellees' brief would make it seem that fluoridation is exactly similar to vaccination, and that the case of *Jacobson vs. Massachusetts*, 197 U. S. 11 gives a legislative body unlimited authority to enact compulsory fluoridation legislation.

If one examines the *Jacobson* case, a great landmark in constitutional law, and the preservation of the rights of individual citizens, it is clear that the *Jacobson* case defines when the police power may invade the personal liberty of individuals. The case first recognizes rights of in-

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dividuals as being paramount and then explains, how, and under what limited circumstances, the state may interfere with these fundamental rights of free peoples. The facts of the *Jacobson* case were that an epidemic of smallpox was raging in the town. On the basis of preventing a disease that was contagious, malignant and infectious, during an emergency of an epidemic, and under a clear and present danger to the public, this Court sanctioned the invasion of personal liberty by quarantine for those who refused vaccination.

However, it must be emphasized that at no time did this Court say that the body of an individual could be invaded with serum or medicine against the will of the individual.

The basis of the *Jacobson* decision is well stated in this language in the opinion at p. 27:

> "Upon the principle of *self-defense*, of *paramount necessity*, a community has the right to protect itself against an **epidemic of disease which threatens the safety of its members.**" (Emphasis ours.)

And again at p. 29 this Court said:

> "* * * in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, **under the pressure of great dangers,** be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." (Emphasis ours.)

Dental caries is not a disorder which is contagious, malignant or infectious within the language of the *Jacobson* case; nor does it constitute an emergency or "pressure of great danger" sufficient to warrant restraint of the liberty of individuals nor involuntary invasion of the

bodies of the citizens of Cleveland with compulsory medication.

It is thus clear that appellees have distorted the true intent and meaning of the *Jacobson* case.

II. THE FLUORIDATION ORDINANCE IS COMPULSORY MEDICATION AND THUS INVALID AS AN INVASION OF PERSONAL LIBERTY GUARANTEED BY THE CONSTITUTION.

Even appellees have not dared to argue that fluoridation is not "medication." How could they when a chemical substance is added to water and intended to enter the bodies of individuals and act on those bodies?

However, appellees for the first time argue that the ordinance providing for fluoridation is not "forced medication" because no person is compelled to use the water furnished by the city for drinking purposes, and the ordinance makes no such provision.

Appellees state that a person who does not desire to drink fluoridated water may purchase bottled water. It is unnecessary to compare the cost of "bottled water" to water furnished by the City. Needless to say that the cost of bottled water is prohibitive to many citizens of the City of Cleveland.

A similar argument was advanced during the French Revolution when the Queen of France said to the starving masses "If they can't eat bread, let them eat cake."

There is, of course, no other water supply system available to appellant, since the City of Cleveland is the only public agency which owns and maintains a water supply system in the City of Cleveland, Cuyahoga County, Ohio.

Therefore, in a modern community like Cleveland every person among 1,200,000 souls must necessarily de-

pend upon city water; and the failure to obtain city water could and does constitute a deprivation of liberty by compelling a person to undergo real hardship or a penalty for refusal to submit to medicated water.

Certainly, once a municipality undertakes to furnish water to a community it must do so for each individual without compelling such individual by reason of adulteration of the public water, to purchase bottled water or dig a well.

Thus, since fluoridation imposes a special and burdensome penalty on individuals who refuse to drink fluoridated water, it does constitute an invasion of the liberty of individuals as guaranteed by the Constitution.

III. FLUORIDATION IS AN EXPERIMENT—COMPETENT SCIENTISTS DISAGREE ON THE MERITS OF FLUORIDATION DENTALLY AND ITS POSSIBLE DANGERS TO HEALTH NON-DENTALLY—IT THUS VIOLATES CONSTITUTIONAL GUARANTIES.

Appellees infer in their brief that fluoridation is not an experiment and that there is complete agreement among scientists as to its merit dentally and its safety non-dentally.

The fact is quite the contrary. Competent scientists do disagree as to the dental merits of fluoridation and its dangers non-dentally.

This is proven by the transcript of testimony given before the Delaney Committee of Congress in 1952 when scientists from all over America appeared and testified. (In evidence as Plaintiff's Exhibit No. 6.) The Delaney Committee wrote a report which is also in evidence and contains the following significant statements:

"A minority view is held by a number of qualified scientists, who believe that the safety of this procedure (fluoridation) has not yet been sufficiently demonstrated. It is their position that the proponents of fluoridation are proceeding too rapidly in recommending that communities fluoridate their water supplies immediately."

(*Delaney Report* reprinted at p. 449 of the Record, Plaintiff's Exhibit, Number 5.)

"The committee is of the view that a sufficient number of unanswered questions concerning the safety of this program exists as to warrant a conservative attitude. The committee believes that if communities are to make a mistake in reaching a decision on whether to fluoridate their public drinking water, it is preferable to err on the side of caution."

(*Delaney Report* as reprinted at p. 458 of the Record, Plaintiff's Exhibit, Number 5.)

In addition, the agreed statement of facts, to which appellees agreed (Agreed Statement of Fact No. 15) states as follows:

"There is a difference of opinion in the United States as to the value of fluoridation in preventing and reducing dental caries in children and its effect on the health and well-being of the adult population; the introduction of inorganic fluoride chemicals to Cleveland city drinking water is a local experiment which it is anticipated will produce the result of lessened dental caries in children without any ill effects to the health of the people generally."

It is thus clear that fluoridation is an experiment—and is thus a violation of individual liberty and constitutional rights by compelling individuals to take part in an experiment without their express consent.

IV. APPELLEES AVOID THE GRAVE CONSTITUTIONAL QUESTIONS POSED BY APPELLANT.

Other than stating the two fundamental questions presented by appellant, appellees make no effort to answer them except to rely upon the authority of three state court decisions and the fact that this Court has on three occasions, twice on certiorari and once on appeal, refused to consider the validity of fluoridation on the merits. Appellant is not concerned with the three state court decisions other than to impress upon this Court the unique opportunity afforded by this appeal to inquire into *all* of the constitutional implications inherent in fluoridation. No one case of the three previous cases seeking admission to this Court raised *all* of the constitutional issues, nor seriously argued them. The decisions by three state courts out of 48 is certainly not controlling as to any question, let alone one as serious in its constitutional implications as fluoridation.

However, a number of courts and judges have in unequivocal language rejected fluoridation and denounced its serious invasion of individual liberty. Justice Hill of the Washington Supreme Court in the case of *Kaul vs. City of Chehalis,* 277 P. 2d 352, 45 Wash. 2d 616 (1954), in his dissenting opinion (the court split 5/4) said:

> "What the residents of Chehalis could not be compelled to do one by one, it is now sought to compel them to do *en masse*; a treatment to which they individually could not be compelled to submit is here sought to be applied by more subtle but no less compulsory means. This smacks more of the police state than of the police power." (277 P. 2d at 361.)

The Supreme Court of Ottawa has just held fluoridation of Toronto water invalid in this language:

> "I do not want to be understood as saying that a municipality entrusted with the duty of supplying whole-

some water could not do something to make the water more wholesome in the sense of being more beneficial to health *as water* but I think a municipality enters a different field when it proposes to add to pure and wholesome water something *for medicinal purposes* and the real purpose is not to make the water pure and wholesome. I do not think the Legislature intended that a municipality should be given power to prescribe medicinally for the health of its inhabitants by adding to the water supply anything such as fluoride for the purpose of improving the general health of the community."

The Corporation of the Village of Forest Hill v. The Municipality of Metropolitan Toronto (Dominion Law Report March 19, 1956) decided March 19, 1956—as yet unreported.

It would thus appear that while appellees are perfectly willing to gloss over and disregard the fundamental and serious constitutional questions inherent in fluoridation, yet some courts have found, recognized and dealt with these questions by finding fluoridation illegal and unconstitutional.

V. APPELLEES HAVE COMPLETELY AND STUDIOUSLY DISREGARDED THE CERTIFICATE OF CHIEF JUSTICE CARL V. WEYGANDT AS TO THE EXISTENCE OF A FEDERAL QUESTION.

Attached to appellant's Jurisdictional Statement is a certificate of Chief Justice Carl V. Weygandt of the Ohio Supreme Court that the Federal constitutional questions were raised by appellant and decided adversely to appellant by the Ohio Supreme Court. While not binding on this Court, nevertheless it does constitute a definite statement by the highest judicial officer in the state of Ohio, which should not be lightly disregarded.

VI. APPELLEES ADMIT THAT THE QUESTIONS RAISED BY APPELLANT ARE OF GREAT GENERAL AND PUBLIC INTEREST—WITH THIS APPELLANT AGREES.

In speaking of the many law review articles on fluoridation (p. 12 Appellees' Brief) appellees say: "The most that can be said for them (the law review articles) is that the question is one of wide interest."

With this statement appellant agrees, and on this ground urges the Court to consider this unusually important case on its merits, because it is obvious that all legal scholars do find the constitutional questions involved to be serious.

The proponents of fluoridation now claim 1,150 communities fluoridated with 23,000,000 people enjoying the benefits thereof. (New York Times, April 15, 1956.) Presumably their goal is complete fluoridation—taking in 160,000,000 people.

No case ever had a greater general and public interest!

CONCLUSION.

We have hesitated to belabor this Court with extensive and unduly lengthy briefs. Yet, we are mindful of our duty to adequately present and explain these serious questions which cry out for determination by the final tribunal of this land:

1. Can medical treatment be forced upon individuals without their consent?

2. May the water supply of a community be used as the vehicle for medical treatment?

We respectfully urge this Court to note jurisdiction in this case.

Respectfully submitted,

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MOTION FILED APR 19 1956

In the Supreme Court of the United States

No. 693.

OCTOBER TERM, 1955.

WILLIAM J. KRAUS,
A Taxpayer on Behalf of the City of Cleveland,
Appellant,

vs.

CITY OF CLEVELAND, *et al.*,
Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE BY THE CHRISTIAN SCIENCE BOARD OF DIRECTORS AND BRIEF IN SUPPORT OF THE JURISDICTIONAL STATEMENT.

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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5547

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CITY OF CLEVELAND, *et al.*,
Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE BY THE CHRISTIAN SCIENCE BOARD OF DIRECTORS IN SUPPORT OF THE JURISDICTIONAL STATEMENT.

The Christian Science Board of Directors on behalf of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, its 16 branch churches in Greater Cleveland and its 2364 other branch churches throughout the United States respectfully moves the Court for leave to file a brief *amicus curiae* in support of the Jurisdictional Statement in this case. The consent of the appellant, William J. Kraus, appearing *in propria persona,* has been obtained. The consent of the appellees, City of Cleveland, et al., has been requested and refused.

The interest of The Christian Science Board of Directors in this litigation arises from the fact that there is here presented the question of the right of a municipality to

place medicinal additives in its municipal water supply for the purpose of ameliorating or preventing tooth decay in children. The benefits of such medication are questioned by eminent medical authorities but applicant does not concern itself with the merits of such questions. The religion of Christian Science teaches that one of the first duties of its adherents is reliance upon spiritual means alone for healing disease and preserving a healthy body in complete rejection of medicine or other systems of healing such as the osteopathic, chiropractic, naturopathic, psychiatric and the like. For all practical purposes fluoridation of the municipal water supply requires communicants of the Christian Science Church to imbibe directly or indirectly water into which such medicinal additives have been put for the specific purpose of acting upon the persons drinking or otherwise receiving such medicated water into their systems contrary to the religious convictions of the communicants of such church. This would be compulsory state medicine and a dangerous precedent.

The reasons under Rule 42(3) that The Christian Science Board of Directors believes a brief *amicus curiae* in support of appellant's position may be of aid to the Court are (1) that although the record shows careful preservation of the question of freedom of religion from the outset, the Jurisdictional Statement cites no cases relating thereto and the able brief of appellant in the Supreme Court of Ohio cited only *West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943) and *Cantwell v. Connecticut*, 310 U. S. 296 (1940); (2) that the application of the clear and present danger test to the invasion of religious liberty here involved should be developed; (3) that the relation between the "establishment of religion" and fluoridation of a municipal water supply by placing medic-

inal additives in it should be explored and (4) that the finality of a legislative determination upon a highly disputed public health program which trenches on the settled religious convictions of large numbers of the citizenry subjected thereto should be carefully weighed in the light of the concurring opinion of the late Mr. Chief Justice Stone in *Skinner v. Oklahoma,* 316 U. S. 535, 543 (1942).

Respectfully submitted,

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BRIEF IN SUPPORT OF MOTION TO FILE BRIEF AS AMICUS CURIAE.

INTRODUCTION.

One previous case involving fluoridation of a municipal water supply has come to the Court on appeal. That case was *Chapman v. City of Shreveport,* 348 U. S. 892 (1954). The question of freedom of religion was not presented. This is underscored by the concluding sentence of a note in 15 *La. L. Rev.* 817, 820 dealing with the *Chapman* case:

> "It is interesting to note that the legislation in the instant case was not challenged specifically as an invasion of freedom of religion."

The appeal was dismissed for want of a substantial federal question.

In two other fluoridation cases certiorari has been denied. These are *De Aryan v. Butler,* involving the City of San Diego, California, 347 U. S. 1012 (1954) and *Dowell v. City of Tulsa,* 348 U. S. 912 (1955). In both freedom of religion was only cursorily treated. In the *Dowell* case (273 P. 2d 859) the Oklahoma court said that plaintiff did not elaborate on the allegation raising the religious liberty issue and disposed of the contention in a single sentence along with the charge that fluoridation constituted the unlicensed practice of medicine. In the *De Aryan* case the California court merely said that this Court "has distinguished between the direct compulsions imposed upon individuals, with penalties for violations, and those which are indirect or reasonably incidental to a furnished service or facility." 119 Cal. App. 2d 674, 683; 260 P. 2d 98, 103.

Thus it is plain that no case prior to the case at bar has clearly presented to the Court the questions of con-

flict between the fluoridation of a municipal water supply by placing in it medicinal additives and the freedom of religion safeguarded to individual citizens under the First and Fourteenth Amendments of the Constitution of the United States.

ARGUMENT.

I. There is no clear and present danger supporting any public interest in an invasion of religious liberty.

Reliance upon spiritual means alone for the prevention and cure of disease is a first duty of adherents to the religion of Christian Science. The primacy of this religious teaching in Christian Science cannot be gainsaid as is shown in the following quotations from its denominational textbook, *Science and Health with Key to the Scriptures* by Mary Baker Eddy:

> "First in list of Christian duties, he [Jesus] taught his followers the healing power of Truth and Love. * * *" (Page 31.)

> "* * * God being All-in-all, He made medicine; but that medicine was Mind. It could not have been matter, which departs from the nature and character of Mind, God. * * *" (Page 142.)

> "It is plain that God does not employ drugs or hygiene, nor provide them for human use; else Jesus would have recommended and employed them in his healing. * * *" (Page 143.)

> "* * * Inferior and unspiritual methods of healing may try to make Mind and drugs coalesce, but the two will not mingle scientifically. * * *" (Pages 143-144.)

> "Question.—Does Christian Science, or metaphysical healing, include medication, material hygiene, mesmerism, hypnotism, theosophy, or spiritualism?

"Answer.—Not one of them is included in it. * * *" (Page 484.)

In this same connection in her book entitled *Miscellaneous Writings,* Mrs. Eddy in pointing out that a Christian Scientist should not use medicine quotes the Scriptures that "No man can serve two masters;" and "Every kingdom divided against itself is brought to desolation." (Page 88.)

The binding effect of the injunctions implicit in the foregoing quotations upon individual Christian Scientists is made clear in the following statement from the *Manual of The Mother Church,* also by Mrs. Eddy, which sets forth the by-laws governing the Christian Science denomination:

> "Healing the sick and the sinner with Truth demonstrates what we affirm of Christian Science, and nothing can substitute this demonstration. I recommend that each member of this Church shall strive to demonstrate by his or her practice, that Christian Science heals quickly and wholly, thus proving this Science to be all we claim for it." (Page 92.)

Thus the importance to Christian Scientists of being free from enforced or involuntary medication is indisputable. Equally beyond dispute is the fact that a fluoridated municipal water supply makes consumption of medicated water virtually unavoidable. In contrast, the public good sought to be attained is the prevention of dental caries or tooth decay in children largely between the ages of 6 and 12. The ailment is not contagious. No threat of epidemic is presented. No denial of alternative possibilities recognizing the element of individual choice is made, although such alternatives as topical application of fluorides by a dentist, the use of fluoridated tooth paste, and the individual addition of fluorides to the children's drinking

water at mealtime not only permit the use of fluorides but also the control of dosage, which is not possible when all public water is fluoridated equally but consumed by children and others in widely variant quantities. In this context it is submitted that no clear and present danger to the public is shown which will justify placing a limitation on the right of religious freedom guaranteed by the First Amendment and made applicable to states by the Fourteenth Amendment.

In *West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943) a decree of injunction below restraining the enforcement of a regulation requiring participation in salute to the flag and the pledge of allegiance contrary to religious convictions was affirmed. In answering the contention that the proper forum for vindication of plaintiffs' rights was the legislature, Mr. Justice Jackson spoke for the Court as follows:

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." (Page 638.)

Later Mr. Justice Jackson said:

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite

than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which legislature may have a 'rational basis' for adopting. *But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect.* * * *" (Page 639.) (Emphasis added.)

In *Thomas v. Collins*, 323 U. S. 516 (1945), a Texas conviction of a labor leader from out of state who solicited members in a speech without obtaining an organizer's card was reversed. Mr. Justice Rutledge spoke for the majority as follows:

"*For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger.* The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to as-

semble and petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. *De Jonge v. Oregon*, 299 U. S. 353, 364, and therefore are united in the First Article's assurance. Cf. 1 Annals of Congress 759-760.

"This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience. Cf. *Pierce v. Society of Sisters*, 268 U. S. 510; *Meyer v. Nebraska*, 262 U. S. 390; *Prince v. Massachusetts*, 321 U. S. 158. Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest." (Pages 530-531.) (Emphasis added.)

II. Fluoridation of a municipal water supply falls within the prohibition of the First Amendment respecting the establishment of religion.

It has been demonstrated under point I above that reliance upon spiritual means alone for the healing and preventing of disease is a basic teaching of Christian Science and practice of Christian Scientists. A corollary is the refusal and rejection of medicine. Fluoridation of a municipal water supply imposes upon communicants of the Church of Christ, Scientist, the practical necessity of consuming directly or indirectly water containing medicinal additives, it being unquestioned that the function of said additives is to operate on the person consuming the water and not as a purifying or cleansing agent on the water itself. Applicant submits that fluoridation therefore amounts to acceptance and recognition by the state of a therapeutic and prophylactic system based upon the administration of medicines or drugs against the wishes and

religious beliefs of the recipient. To this extent fluoridation thus operates as an establishment or official recognition and approval of those religious denominations which find no incompatibility in the use of medicines or drugs and the tenets of their faith and a repudiation or disapproval of Christian Science which rejects the use of such material means. Such an establishment runs counter to repeated statements of this Court.

Zorach v. Clauson, 343 U. S. 306 (1952);
Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 (1948);
Everson v. Board of Education, 330 U. S. 1 (1947);
Cantwell v. Connecticut, 310 U. S. 296 (1940).

In the *Everson* case the Court said:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. * * *" (Page 15.)

The foregoing was largely quoted with approval in the *McCollum* case. In the *Zorach* decision Mr. Justice Douglas accepted the *McCollum* doctrine and said:

> "* * * Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. * * *" (Page 314.)

The applicant submits that legislation for the fluoridation of a municipal water supply violates the "wall of separation between church and State" by imposing medication upon Christian Scientists contrary to their desires

and religious convictions and by placing the stamp of governmental approval upon forms of religious belief which do not find any conflict with the use and application of medicine or drugs.

III. A Legislative Determination Amounting to Wholesale Invasion of the Personal Liberty of the Communicants of a Religious Denomination Is Subject to Re-examination in the Courts.

Although in *Jacobson v. Massachusetts*, 197 U. S. 11 (1905) involving the constitutionality of a compulsory vaccination statute, the refusal of the trial court to admit evidence to prove "alleged injurious or dangerous effects of vaccination" was upheld, this was justified on the ground that the legislative judgment accorded with common belief of which the court could take judicial notice. Furthermore the statute made an exception as to certain children and this Court indicated a willingness to create a judicial parallel for adults in certain cases. No common belief in the efficacy or safety of fluoridation for the amelioration or prevention of tooth decay in children exists. On the contrary the subject is much disputed. In *Skinner v. Oklahoma*, 316 U. S. 535 (1942) an Oklahoma statute for sterilization of habitual criminals was held to be unconstitutional. The majority placed their decision on a failure to give equal protection under the law. Mr. Chief Justice Stone concurred in result but found a due process question. He stated his position thus:

> "Moreover, if we must presume that the legislature knows—what science has been unable to ascertain—that the criminal tendencies of any class of habitual offenders are transmissible regardless of the varying mental characteristics of its individuals, I should suppose that we must likewise presume that

> the legislature, in its wisdom, knows that the criminal tendencies of some classes of offenders are more likely to be transmitted than those of others. And so I think the real question we have to consider is not one of equal protection, but whether the wholesale condemnation of a class to such an invasion of personal liberty, without opportunity to any individual to show that his is not the type of case which would justify resort to it, satisfies the demands of due process." (Page 544.)

In other words, Mr. Chief Justice Stone expressed the point of view that the finality theretofore accorded a legislative judgment upon the remedy for an ill within its power to treat should not be observed, at least when there is involved a serious invasion of personal liberty. The preferred status of rights under the First Amendment has been observed under point I. In the present context the rule enunciated by Mr. Chief Justice Stone means that the courts should decide whether there was adequate basis for the legislative judgment expressed by the Cleveland City Council in adopting a program to fluoridate the municipal water supply. The evidence in the record contains the transcript of the *Hearings Before the House Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics* of the 82nd Congress (Jurisdictional Statement, p. 13). The committee conducting said hearings became known as the Delaney Committee. After an exhaustive review and extensive expert testimony, the final report of the Delaney Committee concluded that fluoridation of the public drinking water should not be adopted (Jurisdictional Statement, p. 14). Applicant submits that the courts should re-examine the predicate for the legislative decision under the concurring opinion in the *Skinner* case before permitting Christian Scientists in the Cleveland area to suffer the serious invasion of their

rights under the First Amendment which fluoridation will impose.

CONCLUSION.

The Christian Science Board of Directors, as applicant, respectfully requests that the Court grant its motion for leave to file a brief *amicus curiae* herein in support of the Jurisdictional Statement and that the Court note probable jurisdiction. In support applicant cites the concluding remarks of three law review articles dealing with the legal aspects of fluoridation:

> "It is submitted that the actions of these appellate courts are correct; but it is to be regretted that the Supreme Court has denied certiorari in these cases. There is need for a demarcation of the permissible scope of the municipal authorities, acting under the police power, to treat and administer drugs to the entire community, regardless of minority protests." 23 *Geo. Washington L. Rev.* 343, 357 (1955).
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> "* * * In summation, it can be said that the attacks on fluoridation have been soundly answered by the courts in the police power and miscellaneous area. It is to be hoped that if another case in the fluoridation field arises, the religious freedom issue will be much more fully argued and examined." 1 *Wayne L. Rev.* 141, 144 (1955).
>
> "* * * This is held a valid exercise of the police power because it has reasonable relation to public power. But now, what else can be added to the water supply as beneficial to public health? The implications are vast. Are we opening a new door in public health measures by allowing the use of water supplies as the means for the addition of beneficial substances to the body? Is the next step the addition of vitamins or poliomyelitis vaccine? And then what? Whether they realize it or not, apparently the courts in these decisions have found that the police power of municipali-

ties is broader in scope than was previously realized." 57 *West Virginia L. Rev.* 205, 207 (1955).

Respectfully submitted,

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MAY 21, 1956.

Decisions Per Curiam.

No. 693. KRAUS *v.* CITY OF CLEVELAND ET AL. Appeal from the Supreme Court of Ohio. *Per Curiam:* The motion for leave to file brief of the Christian Science Board of Directors, as *amicus curiae,* is denied. The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. Appellant *pro se. Joseph H. Crowley* for appellees. Reported below: 163 Ohio St. 559, 127 N. E. 2d 609.